

Legislative Audit Division

State of Montana



Report to the Legislature

October 1996

Performance Audit Report

Food and Consumer Safety Section

Department of Public Health and Human Services

This report contains recommendations for improvement of program operations. Recommendations include:

- ▶ Increasing training/education assistance to local health units and establishments.
- ▶ Establishing risk-based inspection frequency.
- ▶ Seeking legislation to require local pool inspection.
- ▶ Seeking legislation to establish risk-based license fees.

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PERFORMANCE AUDITS

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy. In performing the audit work, the audit staff uses audit standards set forth by the United States General Accounting Office.

Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, computer science, communications, and engineering.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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Legislative Audit Division

Performance Audit

Food and Consumer Safety Section

Department of Public Health and Human Services

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LEGISLATIVE AUDIT DIVISION

October 1996

The Legislative Audit Committee
of the Montana State Legislature:

We conducted a performance audit of licensure and inspection activities of the Department of Public Health and Human Services's Food and Consumer Safety Section (FCSS). The mission of FCSS is to help local health units consistently interpret and implement public health regulations. This report contains recommendations for improving the efficiency and effectiveness of FCSS operations. A written response from the department is included at the end of the report.

We appreciate the cooperation and assistance of department staff during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott A. Seacat".

Scott A. Seacat
Legislative Auditor

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Appointed and Administrative Officials

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Mitzi Schwab, Chief, Food and Consumer Safety Section

Report Summary

Introduction

The Legislative Audit Committee requested a performance audit of the Food and Consumer Safety Section (FCSS) at the Department of Public Health and Human Services. We developed audit objectives related to legislative intent, licensure, inspection, and the effective use of department staff and local sanitarians. We examined four primary FCSS programs: food establishments, public accommodations, trailer courts, and swimming pools/spas.

Statutory Powers

According to Section 50-1-202, MCA, department duties include: conducting investigations, disseminating information, and making recommendations for control of diseases and improvement of public health to persons, groups, or the public. The department can use local health personnel to administer public health laws. Local boards of health are empowered to validate licenses, make inspections for sanitary conditions, and file complaints for violation of public health statute and rule.

Purpose and Mission

The purpose of FCSS programs is to prevent and eliminate conditions and practices which endanger public health, including sanitation and safety. The FCSS mission is to provide public health protection by delivering technical services, education and training, and enforcement through local health units. FCSS programs provide state oversight to achieve consistent interpretation and implementation of public health statute and rule at the local level.

State Responsible for Licensure

Statute requires establishment owners/operators to procure a license from the department annually. Licensure is intended to help assure establishments meet public health facility and safety standards. In calendar year 1995, approximately 8800 establishments were licensed by the department.

Report Summary

| | |
|---|---|
| Regulatory Requirements Apply to Non-licensed Establishments | Statute does not require licenses for schools, churches, theaters, jails, or other buildings or facilities where persons assemble, including most governmental facilities. However, non-licensed establishments must comply with public health and safety statutes and administrative rules. |
| Licenses Fees | All license applications, annual renewals, and fees are submitted to the department and tracked by FCSS. Statute authorizes redistribution of license fees to counties to support local inspection activity. In Fiscal Year 1994-95, the department collected over \$485,000 in license fees and \$415,000 was returned to local health boards. |
| Inspection Frequency Set | Administrative rules designate two inspections annually for food establishments. Hotels, motels, roominghouses, campgrounds, and trailer courts require one annual inspection. Swimming pools and spas require one inspection if a seasonal operation and two if year-round. |
| Training and Assistance | To verify state-wide consistency, FCSS evaluates local sanitarian qualifications and training, provides local training/education, and reviews and assists with inspection activities. Audit work revealed consistency has been achieved for activities such as inspection completion, maintaining required inspection documents in local files, facility licensure, and procedures for investigating illness outbreaks and complaints. However, the lack of emphasis on a training/education and assistance role has affected the achievement of state-wide consistency in areas such as: available training, inspection checklist use, facility plan review, follow-up inspection, and implementation of guidelines. |

Increase Training and Assistance

To increase training/education assistance to local health units and establishment operators, FCSS should consider alternatives such as: increasing frequency of visits to counties, establishing a video library, and utilizing existing county training packages. Since training/education limitations frequently occur because of conflicts between local priorities and FCSS requirements, the approach should consider local workload requirements.

Inspection Emphasis

Public health and protection requires an effective compliance verification and regulatory component. Spot inspections of conditions are used by local sanitarians to ensure public health protection. This approach is more reactive than preventive, because spot inspection finds problems after-the-fact. To meet an inspection quota, sanitarians limit time spent on training and assistance of owner/operators. With the focus on the number of inspections, local sanitarians conduct the required two annual inspections of every food establishment, yet do not have adequate time to educate and inspect higher risk establishments, probably requiring more than two visits each year. Sanitarians also conduct annual inspections of low risk motels and trailer courts which limits time for higher risk food establishments

Alternative: Assess and Reduce Risk

To more effectively utilize limited sanitarian resources, local health officials need to concentrate on their highest risk establishments/activities, regardless of category: food establishment, public accommodation, campground/trailer court, swimming pool/spa, or septic pumper. In conjunction with FCSS, county sanitarians should develop risk criteria and revise procedures to allow a variable inspection/education visit frequency to coincide with risk. Since non-licensed facilities can represent public health risk like licensed facilities, these facilities should be included in risk assessment and training/education visits or inspection planning.

Report Summary

Swimming Pool Inspection Responsibility

Section 50-53-209, MCA, assigns inspection responsibility to the department and provides an alternative for county inspection through a cooperative agreement between state and local government agencies. Eight counties have declined responsibility for inspections. Therefore, FCSS staff conduct pool/spa inspections in these counties which account for approximately 30 percent of Montana's 400 pools and spas. The statutes which address inspection responsibilities for food establishments, public accommodations, and trailer courts do not allow for local health authorities to decline participation in inspection activity.

Pool Statute Consistency is Needed

The department should seek to revise legislation for swimming pools and spas to require local sanitarians to support pool inspection requirements similar to other public health statutes.

University System Inspection Alternatives

According to public health statute, the department shall inspect Montana University System units periodically as necessary. To conduct these inspections, FCSS staff use considerable travel time. In addition, their capability to respond to complaints, conduct necessary follow-up inspections, or provide training/education is limited because of location and travel.

Alternatives More Effective

Unlike other non-licensed facilities such as public school cafeterias, some university system food establishments could be licensed because of their similarity to commercial activities. If licensed, local health departments would receive the license fee and county sanitarians could conduct training/education visits and inspections in accordance with established risk assessment procedures. In addition, the University of Montana and Montana State University have sanitarians assigned who could assist with swimming pool inspections. FCSS should coordinate requirements and training or inspection activity with local sanitarians and university system sanitarians.

Combination of Funding Required for Local Program Costs

Statutory license fees do not provide funds for the total cost of public health and safety inspection and training/education, administration, follow-up inspections, consultations, and construction plan reviews. Local general funds or in some cases a combination of general fund and locally established service fees support the remainder. Based on our survey of county sanitarians, we estimate license fees currently support approximately 35 percent of the total cost of these programs.

Non-licensed Facility Inspection Costs are Public Responsibility

The training/education and inspection costs associated with non-licensed facilities such as schools, jails, or other county and municipal government facilities are not intended to be covered by the revenue from licensed establishments. As a result, the public is responsible for the burden of non-licensed facility public health costs.

License Fees are not Based on Risk or Inspection Time

License fees do not distinguish facility complexity or size. Therefore, fees do not reflect an assessment of the relative risk to public health or local sanitarian time. Risk-based licensure could help assure the most effective determination of work priorities for local sanitarians. Higher risk establishments/facilities should be assessed higher license fees and designated for more frequent training/education and inspection visits. Lower risk establishments with lower license fees may not require annual education or inspection visits.

Risk-based Approach Improves Sanitarian Effectiveness

Risk-based license fees which reflect the necessary training/education and inspection activity could help local health authorities assure the most effective determination of sanitarian workload priorities and utilization of available time. The department should consider fee alternatives and involve local health authorities, industry, and the public in establishment of a more equitable approach.

Chapter I - Introduction

Introduction

The Legislative Audit Committee (LAC) requested a performance audit of the Food and Consumer Safety Section (FCSS), Communicable Disease Control and Prevention Bureau, at the Department of Public Health and Human Services (PHHS). We set audit scope following a preliminary review of FCSS responsibilities, operations, and activities.

Audit Objectives

We developed five audit objectives:

- Does agency oversight meet legislative intent to consistently implement and interpret regulations?
- Are statutory licensing procedures followed and are establishments which require a license properly licensed?
- Do training and inspection activities for licensed and non-licensed establishments/facilities enhance compliance with statute and rule requirements?
- Are there FCSS licensure, inspection, or compliance statutes which should be revised or repealed?
- What methodology should be used to determine the license fee amount?

Audit Scope and Methodology

The audit was conducted in accordance with government auditing standards for performance audits. Audit scope and methodologies included review of FCSS statutes and an Attorney General Opinion concerning county participation in the inspection program. To determine if operations support legislative intent, we examined agency organization and its structure and the relationship with local health units. We reviewed agency oversight of the facility inspection program, licensure process, and staff training activities. We also examined administrative rule preparation because of potential impact on workload planning and program consistency. To help assess consistency, we reviewed the following documentation and files: 1) quarterly inspection activity, 2) performance documentation for return of license fees to counties, 3) staff training visits, and 4) policy and guidance memorandums.

Chapter I - Introduction

We interviewed sanitarians responsible for 24 of 56 counties about work activities to: 1) assess program consistency and level of support received from FCSS, 2) determine inspection scheduling, accomplishment, and cost, 3) identify issues related to implementation of regulatory requirements, 4) determine capability of license fees to cover local inspection costs, 5) verify maintenance of establishment/facility inspection reports and files, and 6) examine complaint and illness investigation procedures used by FCSS and county sanitarians. To help assess program consistency, we observed sanitarian inspections including restaurants, food stores, motels, swimming pools, and trailer courts.

We examined other states' programs to consider alternatives for oversight of FCSS programs and options for statutes/rules, state versus county roles, training responsibilities, use of registered sanitarians, licensed facilities versus non-licensed facilities, and fees. We also solicited comments from associations involved with food distributors, trailer courts, and motel, restaurant, tavern and swimming pool operators on the role of the state for training/education, license fee alternatives, and agency coordination.

We did not examine the technical merit of statutes/rules such as required food temperatures or technical competency of FCSS staff or sanitarians. We did not conduct audit testing of other programs such as mosquito control, donated foods, nuisances, indoor air, and pesticides. We did not audit FCSS programs such as consumer product safety and product packaging and labeling. These programs are not designated as responsibilities of local health units and are not associated with licensure and inspection.

Compliance

We examined compliance with statutes and administrative rules (ARMs) for FCSS programs. FCSS is generally in compliance with statutory requirements. We address an ARM compliance issue regarding follow-up inspections in the following management memorandum section.

Management Memorandum

During the audit, a management memorandum was sent to the department concerning the following:

Enforcement Assistance - To improve compliance of repeat violators, sanitarians suggested a process for referral to the department which in turn would recommend non-renewal of annual licenses by county health officials.

Data Systems Efficiencies - Many counties use electronic data systems for tracking inspections and forwarding quarterly reports to FCSS. The section should review county computer capability for potential report standardization and more efficient electronic transmission.

Follow-up Inspection Alternatives - When critical items are identified during inspections, the ARMs require a follow-up within ten days. Since compliance with this requirement is not always possible due to travel limitations and other priorities, FCSS should revise procedures to allow alternatives to increase sanitarian efficiency.

FDA Facility Coordination - Coordination and communication between the section's inspector responsible for Food and Drug Administration (FDA)-designated food manufacturers and county sanitarians should be improved.

Chapter II - Background

Introduction

In this chapter, we provide background information about the regulatory responsibilities and associated activities of the Food and Consumer Safety Section (FCSS). We also address the number of facilities subject to regulation and potential public health risk. The efficient and effective utilization of state and local sanitarian resources is discussed in more detail in Chapter III.

Purpose: Prevent and Eliminate Public Health Risk

According to section 50-1-202, MCA, the powers and duties of the department include: make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public. Statute authorizes the department to provide consultation to local boards of health (county or municipal). The department can also use local departments of health personnel to assist in administering laws relating to public health.

According to statute, the purpose of the primary programs administered by FCSS (food purveyors, public accommodations, trailer courts, pools/spas, and septic pumbers) is to prevent and eliminate conditions and practices which endanger public health, including sanitation and safety. The mission of FCSS is to provide public health protection by delivering technical services, education and training, and enforcement through local health units serving Montana counties. The goal is to reduce the risk of occurrence of an unhealthful condition.

State and Local Roles to Achieve Consistency

The legislative intent of FCSS licensure and inspection programs is to provide state oversight to achieve consistent interpretation and implementation of public health statute and rule at the local level.

Based on this intent, the primary FCSS role is to achieve education, verification, and compliance consistency through training and education programs established for local sanitarians and establishment owner/operators. Day to day responsibility for applying and implementing regulations is retained at the local/county government level. Review of statutes and our audit

Chapter II - Background

interviews and observations indicate the county sanitarian's role should reinforce the state role, specifically:

- educating establishment owner/operators,
- verifying education, and
- assessing compliance and enforcing regulations as necessary.

FCSS Statutory Responsibilities

FCSS is responsible for oversight of public health services related to food establishments, public accommodations (hotels, motels, and rooming houses), campgrounds and trailer courts, swimming pools and spas, and septic pumpers. Statute identifies regulatory requirements for each of these areas. In addition, these regulations apply to schools, jails, child care centers, institutions, and other local and state governmental entities. The figure below lists the primary FCSS statutes.

Figure 1

FCSS Statutory Responsibilities

| Statute Title | MCA Reference |
|---|------------------|
| Cesspools, Septic Pumpers, and Privy Cleaners | 37-41-101 et seq |
| Public Health Laws (Schools, Jails, Institutions, Universities) | 50-1-101 et seq |
| Local Boards of Health | 50-2-101 et seq |
| Food, Drugs, and Cosmetics | 50-31-101 et seq |
| Consumer Product Safety | 50-30-101 et seq |
| Food Establishments | 50-50-101 et seq |
| Hotels, Motels, and Roominghouses | 50-51-101 et seq |
| Campgrounds and Trailer Courts | 50-52-101 et seq |
| Public Swimming Pools and Swimming Areas | 50-53-101 et seq |
| Day Care Centers | 52-2-735 |
| Community Homes for Developmentally Disabled | 53-20-305 |

Source: Compiled by Legislative Audit Division from Montana Code Annotated.

Chapter II - Background

FCSS Staff and Responsibilities

In addition to a section chief, FCSS staff includes 5.0 full-time equivalent (FTE) in Helena. Another FTE, located in the department office in Billings, is responsible for activity in eastern Montana. One additional .5 FTE is responsible for state-wide coverage of a contract with the U.S. FDA.

FCSS Staff Activities

The primary work activities of FCSS staff include:

- License application processing and fee collection.
- Inspection and enforcement.
- Training/education.
- Complaint and illness investigation.
- Administrative rule review and development.

Most of the activity associated with licensure, inspection, and owner/operator training/education is decentralized to the local level health agency or county. Our audit fieldwork focused on these activities and we discuss them in more detail in later sections of the report.

Complaint Investigation

Investigation of complaints and illness is a significant FCSS responsibility because of the direct implication to public health. The current approach maximizes local staff investigation in the interests of timeliness and quick resolution. Both local sanitarians and section staff rate complaint investigation work as a priority when it occurs because of the potential impact to public health from a suspected illness-causing source. In addition to investigation of establishment and facility complaints, FCSS is responsible for investigation of health and safety associated with manufactured products under the Montana Food, Drug and Cosmetics Act and the Consumer Product Safety Act. This responsibility includes inspections and consultations regarding product packaging, labeling, facility construction, and ingredients/composition. For products produced outside of Montana, the section refers complaints to the U.S. FDA and U.S. Consumer Product Safety Commission.

Chapter II - Background

Administrative Rule Revision

Development and revision of administrative rules is a responsibility of Helena-based staff. Many public health rules have not been updated for a number of years. For example, the last major revision of rules for food handling and preparation occurred almost 20 years ago. FCSS is reviewing a federal food code document for possible implementation by Montana. This code could amend or replace almost 100 pages of existing rules. Other anticipated rule review and revision projects include rules for public schools and swimming pools/spas. The rule review and revision process is time-consuming and generally includes: 1) review by FCSS, 2) review and acceptance by local health agencies, and 3) education and acceptance by establishment owner/operators.

FCSS Funding

FCSS staff are funded primarily with state General Fund money. The department also receives a portion of license fee revenue. The majority of license fee revenue is returned to local health boards to fund local program activities. The only federal money associated with the FCSS program is provided by the U.S. FDA for inspection of food manufacturing facilities. The table below reflects funding for fiscal year 1994-95.

Table 1

Fiscal Year 1994-95 FCSS Budget

| | |
|--------------|------------------|
| General Fund | \$374,165 |
| Federal | 32,000 |
| Fees | 43,825 |
| Total | <u>\$449,990</u> |

Source: Statewide Budgeting & Accounting System.

Chapter II - Background

Counties Establish Local Health Agencies

According to statute, local boards of health and health officers are empowered to validate state licenses, make inspections for sanitary conditions, and file complaints for violation of public health statute and rule. Statute also authorizes financing of local health boards through various sources including: a special revenue local board inspection fund, county general fund appropriations, special levy appropriations, available federal funds, and contributions from school boards or other official/non-official agencies.

Section 50-2-116, MCA, empowers local boards of health to establish rules for control of communicable diseases and public facility sanitation. Local rules cannot conflict with public health rules adopted by the department. Statute also provides an option for counties to combine local health activities to cover large areas more effectively with limited resources. As a result, the 56 Montana counties are supported by 38 local health units. A designated health officer has statutory authority for local public health decisions. However, most FCSS compliance verification, plan review, inspection, training and education, and complaint investigation is conducted by sanitarians, registered through the Department of Commerce.

State Responsible for Establishment/Facility Licensure

As a component of program oversight, the department retains control of license issuance and revocation (food purveyors, public accommodations, trailer courts, pools/spas, and septic pumpers). Statute requires establishment owners/operators to procure a license from the department annually. Licensure is intended to help assure establishments meet public health facility and safety standards. During calendar year 1995, FCSS processed 9,800 license requests, resulting in approximately 8,800 licensed establishments. The table below reflects active licenses for calendar year 1995.

Chapter II - Background

Table 2

Food and Consumer Safety Licenses (CY 1995)

| | |
|-----------------------------|-------|
| Food Establishments | 5,783 |
| Hotels/Motels/Roominghouses | 1,095 |
| Campgrounds/Trailer Courts | 1,380 |
| Swimming Pools/Spas | 424 |
| Septic Pumpers | 145 |

Source: Compiled by the Legislative Audit Division from department records.

FCSS works with local health agencies to license regulated facilities. Licensure involves facility review and analysis for compliance with public health regulations/rules, construction plan reviews, inspections, complaint and illness investigation, and training and education. Licensure, particularly for new facilities, frequently involves other state agencies. Examples include fire code requirements (Department of Justice), building codes (Department of Commerce), and meat inspection (Department of Livestock). Local health authorities review license applications to verify compliance with FCSS statutory and administrative rule public health requirements and validate the license issued by the department.

Although license issuance is a major workload activity, revocation is also important. License revocation, used infrequently, is a useful enforcement alternative because establishments require licenses to operate. Without license revocation, enforcement alternatives are limited to: 1) local board of health authority to prohibit use of infected places, and 2) either local or department authority to pursue prosecution for violations of statute and/or rule.

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License Fees

All license applications, annual renewals, and fees are submitted to the department and tracked by FCSS. Licenses expire on December 31 of each year and a renewal is required. Statutory license fees vary by establishment type and are reflected in the following table:

Table 3

License Fees

| | |
|-----------------------------|---------------|
| Food Establishments | \$60.00 |
| Hotels/Motels/Roominghouses | \$40.00 |
| Campgrounds/Trailer Courts | \$40.00 |
| Swimming Pools/Spas | \$75.00/50.00 |
| Septic Pumpers | \$25.00 |

Note: Swimming pool/spa fee is \$75.00 for year-round pools, and \$50.00 for seasonal facilities.

Source: Compiled by the Legislative Audit Division from department records.

License Fees Deposited in Local Board Inspection Fund

Eight-five percent of license fees received by the department is deposited in the special revenue local board inspection fund. Statute authorizes redistribution of local board inspection funds to counties to support local inspection activity. Generally, 85 percent of license fees for establishments within a local health organization area of responsibility are returned to the county. However, FCSS administrative rules allow the department to withhold funds for insufficient inspection performance. FCSS established a goal for counties to complete 85 percent of the required annual inspections to receive full payment. Section management also considers other factors, such as sanitarian turnover, which may not be controllable by the county. This approach allows counties to receive license fee funding for inspection activity even though the 85 percent goal was not achieved.

In fiscal year 1994-95, the department collected over \$485,000 in license fees. Of this total, \$416,000 was returned to local health

Chapter II - Background

boards for inspection-related activity. The remainder was split in accordance with statutory criteria between the General Fund and special revenue fund account used to administer the licensure program.

Late Renewal Fees

Statute also establishes a \$25 fee for late renewal of a license. Late fee payments are not redistributed to local boards. These funds are retained in the special revenue account for department administration of the licensure program.

Other Statutory Fees

In addition to the license fees addressed above, statute allows local health officials to charge a "reasonable fee" for health and safety certification of community group homes for developmentally disabled. For inspection of day care centers, which includes more than FCSS health and safety requirements, local authorities may charge a reasonable fee not to exceed \$25. These fees do not process through the department and are retained and used locally. Not all counties assess and collect the fees allowed by statute for inspection of these facilities.

Inspections Required to Verify Licensure Criteria

Statute empowers both state and local health officers and registered sanitarians to conduct establishment inspections to verify compliance with statutory and administrative rule requirements. Generally, inspections for all licensed facilities are conducted by local sanitarians. Administrative rules designate procedures for sanitarians to conduct required inspections and report results to FCSS.

Statute allows sanitarians to make unannounced inspections during reasonable hours of establishment operation. Inspection forms are provided to owner/operators for all inspections and maintained by local health agency sanitarians. The inspection form contains 44 deficiency categories with individual point values assigned based on the critical nature of the category. Inspections are scored by the sanitarian based on identification of deficiencies in the 44 categories. If the overall score is below a predetermined level (60 out of 100 points for food establishments), or if designated critical factors are found to be out of compliance, a return visit or follow-up inspection by the sanitarian may be conducted to verify

Chapter II - Background

correction. The intent of the inspection process is to identify and correct deficiencies.

Inspection Frequency Set by Statute/ARM

Administrative rules designate inspection frequency for most licensed establishments. Food establishments require two inspections annually. However, food establishment inspection frequency can be modified (reduced to one annual inspection), if justified by the county sanitarian and approved by FCSS. Hotels, motels, roominghouses, campgrounds, and trailer courts require one annual inspection. According to statute, swimming pools and spas require one inspection if a seasonal operation and two if year-round.

The following table shows inspection status for FY 1994-95:

| Facility Type | FY 1994-95 Statewide Inspection Status | | |
|---------------------------|--|-----------------------|----------------------------|
| | Inspections Required | Inspections Conducted | Percent of Total Inspected |
| Food Establishments | 10,118 | 8,154 | 81 |
| Hotel/Motel/Roominghouses | 1,060 | 880 | 83 |
| Campground/Trailer Courts | 1,409 | 1,140 | 81 |

Note: Figures include inspection reduction for 23 counties participating in the modified program.

Source: Compiled by the Legislative Audit Division from department records.

Regulatory Requirements Apply to Non-licensed Establishments

Statute does not require licenses for schools, churches, theaters, jails, or other buildings or facilities where persons assemble. Even though licenses are not required for these facilities or most governmental facilities, compliance with public health and safety statutes and administrative rules is required. According to section 50-1-203, MCA, the department may make public health inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. Local authority to make inspections of these types of facilities is provided through statute

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allowing the department to use local health officials for administering public health laws. Statute also provides for either the department or a local board of health to bring action to correct public health deficiencies in these facilities.

Custodial Institutions and University System

In addition to licensed and non-licensed facilities addressed in the previous sections, statute identifies institutions and university system facilities separately. The department is designated to inspect and work with staff at these facilities to assure compliance with public health inspections. Over the years, FCSS staff have conducted periodic inspections of food services and swimming pools at these facilities.

Public Health Risk

In this section, we discuss public health risk because most FCSS statutes reflect the requirement to reduce, prevent or eliminate public health risk. Before assessing program consistency and FCSS oversight work activities in Chapter III, we provide information about risk potential.

Public health risk can be defined as the likelihood adverse effects will occur to an individual or group as a result of an unsanitary or unhealthful condition. Typically, increased exposure and a large population lead to more serious effects. For FCSS-related programs, the primary public health risk is exposure to microorganism growth which causes illness related to the following:

- **food handling, preparation, or processing** (public and commercial food purveyors, food manufacturers, taverns, and grocery stores),
- **water use for drinking** (public and commercial food purveyors, food manufacturers, taverns, and grocery stores),
- **water use during food handling, preparation, or processing** (public and commercial food purveyors, food manufacturers, taverns, and grocery stores),
- **water use for laundry** (hotels, motels, and rooming houses),

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- **water use for cleaning** (public and commercial food purveyors, food manufacturers, taverns, grocery stores, hotels, motels, and rooming houses),
- **water use for recreation** (swimming pools and spas), and
- **sewage control** (public and commercial food purveyors, food manufacturers, taverns, grocery stores, hotels, motels, rooming houses, trailer courts, and septic pumpers).

Other health risks for FCSS-related programs include:

- **water temperature control** (hotels, motels, and rooming houses),
- **solid waste control** (public and commercial food purveyors, food manufacturers, taverns, grocery stores, hotels, motels, rooming houses, trailer courts, and septic pumpers), and
- **safety equipment** (public and commercial food purveyors, food manufacturers, taverns, grocery stores, hotels, motels, rooming houses, and swimming pools).

Bacteria is Primary Cause of Illness

National data reveals 66 percent of food borne illness is caused by microorganisms or bacteria, another 25 percent is caused by chemicals, and the remainder is a combination of parasites and viruses. Nationwide, two food borne bacteria - *Salmonella* and *Campylobacter* - account for over two million illness cases each year. In Montana during 1995, over 200 illness cases were reported which were traced to these two bacteria. Over 1,400 additional food borne and waterborne illness cases were also reported across the state.

If temperature conditions are right, bacteria can double in number in as little as 20 minutes. A spot the size of a pencil eraser on a single thumb print can contain over 200 bacteria cells. In an hour, there could be almost 2,000 cells, in two hours 14,000, in three hours over 100,000, and in four hours the number of cells approaches 1,000,000. While some food borne illness can result from very few bacteria cells, others require millions before illness is likely. Health consequences from exposure to bacteria depends on the strength of the microorganism, how much is consumed, and individual immune system response.

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Large Number of Facilities Require Compliance Verification

Each year the department licenses over 8,800 establishments which are required to comply with public health and safety regulations. There are also over 1,000 public schools, child care centers, hospitals, and municipal pools which are non-licensed, but must comply with public health requirements. In addition, there are a large number of temporary and transient food service providers such as truckload seafood vendors and county fair food vendors. These numbers fluctuate dramatically each year. Existing statute requires licensure and inspection of many of these temporary and transient establishments, yet because of their nature and conflicting local health priorities, sanitarians are frequently unable to adequately enforce regulatory requirements.

Sanitarian Resources Affected by Other Responsibilities

There are approximately 75 registered sanitarians assigned to local health organizations/county health departments throughout Montana. Many are environmental health directors or supervisors responsible for all aspects of public health including FCSS programs. Local sanitarians are responsible for other state and local programs such as junk vehicles, sewage/septic system planning, air and water quality, solid and hazardous wastes, and stray animal control. While only an estimate resulting from our audit work, it is unlikely there are more than the equivalent of 30 to 35 full-time employees dedicated to FCSS programs state-wide.

Efficient Use of Sanitarian Resources Necessary to Reduce Risk

By comparing the number of available sanitarian resources to the number of establishments/facilities in Montana which could require verification of compliance with statute and rule, there is a need to use resources efficiently for maximum effect. In the next two chapters, we discuss compliance consistency, the impact of risk on the current approach, and suggest alternatives which could improve efficiency and effectiveness for both FCSS and local sanitarians.

Chapter III - Program Consistency & Oversight

Introduction

To reduce, prevent, or eliminate public health risk, FCSS is responsible for consistent interpretation and implementation of regulations at the local level. FCSS administrative oversight procedures are intended to achieve state-wide consistency. In this chapter, we examine consistency and oversight, discuss concerns, and propose recommendations for improvement.

Consistency Derived from Training and Assistance

In Chapter I, we listed an audit objective to determine if agency oversight results in consistent interpretation and implementation of regulations. Consistency demonstrated by local sanitarians enhances compliance consistency in establishments and facilities. Verification of consistency by FCSS is dependent upon oversight and evaluation of local public health activity. FCSS evaluates local sanitarian qualifications and training, reviews and provides local training/education, and reviews and assists with inspection activities. For our audit, we considered the FCSS providing policy and guidance memorandums as part of training/education and assistance.

The audit revealed consistency has been achieved for some activities, but not for others. Portions of the FCSS program reflect state-wide consistency. These areas included inspection completion, maintaining required inspection documents in local files, facility licensure, and procedures for investigating illness outbreaks and complaints.

However, the lack of emphasis on a training/education and assistance role has affected the achievement of state-wide consistency in several other areas such as: training/education, inspection checklist use, plan reviews, follow-up inspections, implementation of guidelines, and local training. In the following sections, we discuss concerns related to these issues.

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Training/Education Approaches Vary

Sanitarian expertise develops from a combination of initial academic qualification, on-going training, and field experience. To achieve consistent food establishment inspections, the section uses a formal training approach established by the U.S. Food and Drug Administration (FDA), known as standardization. According to local sanitarians and section staff, standardization training can take 3-4 dedicated days before uniformity between staff and sanitarians is achieved. Uniformity means that during a food establishment inspection, both the instructor and the student would recognize and document a deficiency in the same way. This includes categorizing the critical nature of a deficiency, marking the correct block on an inspection form, and specifying corrective action. Our audit observations indicate it is difficult for both FCSS and county staff to coordinate and arrange adequate time for standardization training.

Few Local Programs are Standardized

According to FCSS staff, 12 of 38 local programs are standardized. The number of standardized counties has remained fairly constant over the years. FCSS and county staff turnover and the amount of time required to achieve standardization contribute to this situation. Counties with standardized programs include both urban and rural areas of the state. A similar mix of urban and rural areas has never been standardized.

Training Emphasis Varies by Program

Standardization training only applies to the food establishment program. Other programs such as hotels/motels, campgrounds/trailer courts, septic pumpers, and swimming pools/spas do not include a formal training component similar to standardization. FCSS recently initiated a swimming pool operators course, which staff teach to pool operators state-wide and results in a certified operator status. In an attempt to provide training for all FCSS activities, the department also sponsors training for sanitarians through semi-annual conferences usually held in Helena. These conferences offer information on a wide range of environmental and public health issues, not only FCSS topics. During recent conferences, the department has focused on a risk-based approach to food preparation and handling. Sanitarians complimented the quality of the training provided at these conferences, but indicated the Helena location, travel time and expense, and conflicting local priorities prohibit periodic attendance.

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Local Training Also Varies

Several of Montana's urban counties developed courses for safe food preparation and handling. However, there are few training/education opportunities for owner/operators or food handlers in rural communities.

Other Inconsistencies

In addition to training concerns identified in the preceding section, we noted other inconsistencies:

Inspection procedures and form - The 44-item inspection form used for food establishments was developed by the FDA. This form, combined with 75 local sanitarians in Montana, leads to many opportunities for different interpretations. The intent of standardization is to reduce this inconsistency. As a result, during standardization training the emphasis is on how to mark the form.

Facility construction/modification plan review procedures - Counties have the option to conduct plan reviews locally or forward the plans to FCSS for review. This decision is based primarily on local sanitarian preference. County documentation of a completed file review is not consistent. We noted county plan review files which did not include an indication of review or approval. Other counties thoroughly document the review process. While department records show on-going plan review training at semi-annual conferences, our audit work at the local level reflects inconsistency.

Follow-up inspections - ARMs require a follow-up inspection within ten days for critical item deficiencies identified during an annual inspection but not corrected during the inspection. Follow-up inspection criteria is not followed consistently by sanitarians. Procedures vary because factors such as travel distance or inspection history could cause a sanitarian to conduct the follow-up at a later date or decide not to conduct the follow-up.

Non-licensed facility inspections - In Chapter II, we indicated statute does not require either a license or an inspection frequency for many public facilities such as schools, jails, child care centers, or group homes. We found sanitarian workload, including inspections of licensed facilities, and local environmental and public health priorities significantly influences whether or not counties complete routine inspections of these non-licensed facilities.

Implementation of guidelines - When FCSS provides written guidelines for implementation of policy, such as commercial ice manufacturing requirements, interpretation and implementation is left to local discretion. Examples of inconsistency include local

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decisions to delay implementation indefinitely because of conflict with existing sanitarian workload priorities and lack of training/education opportunities.

The department acknowledged increased training for both sanitarians and owner/operators would be beneficial. In the absence of such activity, sanitarians interpret regulations and policy independently.

Change in FCSS Staff Work Focus

Helena-based FCSS staff are each assigned responsibility for specific areas of the food and consumer safety program (food, public accommodations/institutions, trailer courts/pools, and food-drug-cosmetics). According to staff, over the past few years workload emphasis migrated towards rule preparation and development of implementation guidelines which leads to more specialization. Emphasis on development and delivery of training and education decreased to allow work on rules and guidelines. According to staff and local sanitarians, travel has decreased and staff are less available for training/education and assistance. Determining the importance of rules revision work compared to travel and time for training/education is a section management responsibility based on total workload requirements. However, long term impacts should also be considered. Most sanitarians believe an hour of local technical assistance spent on existing regulations may be worth more than an hour of rule rewrite which ultimately still requires training and assistance.

A good example of the potential effectiveness of focus on training/education and assistance, is represented by the FCSS staff member assigned to eastern Montana. This individual provides assistance on all section programs, maintains emphasis on travel throughout the region, and responds to consultation and training requirements of many local sanitarians. While sanitarians in some urban counties/areas specialize, the majority of sanitarians in Montana are "generalists" responsible for all FCSS-related public health programs. Again, the sanitarians we interviewed believe the generalist approach has been effective in eastern Montana.

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Increase Coordination and Visit Frequency for Training and Assistance

By increasing the frequency of county visits, section staff could become more familiar with local priorities and concerns. To more effectively use staff resources in the training/education role and to become more responsive to local needs, FCSS could assign staff regional training responsibilities. This would require the Helena-based staff to become more like generalists, similar to the position responsible for eastern Montana. FCSS-sponsored training/education could focus on local needs such as food preparation time-temperature control, food handler hygiene, or swimming pool cleanliness. The location used for training/education could be rotated throughout the designated region to provide more training opportunity for both sanitarians and establishment owner/operators.

Other Alternatives Include Video Library and Use of Available Courses

One national study suggests the average food service worker is less than 25 years old and stays on the job for less than one year. As a result, training of food service workers is a continual and necessary function. We noted staff in many Montana public schools, nursing homes, and hospitals receive recurring training. Based on sanitarian comments and our limited observations, the high quality of food service operations in many of these facilities substantiates the positive impact of on-going training/education.

To improve opportunities for training, FCSS should consider available alternatives. FCSS could establish a training/education video library using available federal, state, or association course/materials resources. The library could be a training resource to staff conducting training state-wide as well as to local sanitarians offering education opportunities to establishment owner/operators.

FCSS could also take advantage of existing county programs such as the food handler class offered in Yellowstone County or the modification/construction plan review process used in Missoula County. Cascade County offers an alternative take-home booklet and test for food handlers. Options like these, which FCSS helped the counties develop initially, could be packaged and presented as off-the-shelf training in areas of the state currently lacking such programs.

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Summary: Increase Training and Assistance

FCSS should reassess section workload priorities to increase training/education assistance to sanitarians and establishment owner/operators. Training/education should be developed and available for all establishment owner/operators, similar to the training established for swimming pool operators. Since training/education limitations also occur because of conflicts between local priorities and FCSS requirements, the approach used by the section should consider local workload requirements. To increase training/education assistance to local health units and establishment owner/operators, FCSS should evaluate management alternatives such as: assigning staff regional generalist responsibilities to increase visit frequency, establishing a video library, and utilizing existing county training packages.

Recommendation #1

We recommend the department reassess priorities to increase training/education assistance to local health units and establishment owner/operators by increasing the frequency of county visits, establishing a video library, and using existing county training packages.

Oversight is Inspection-Based

Public health and protection requires an effective compliance verification and regulatory component. Traditionally, regulators and industry have depended on spot inspections of conditions to ensure public health protection. In Montana, local sanitarians are responsible for the inspection requirement associated with compliance verification. Local inspectors make routine spot inspections to satisfy code requirements. This approach is more reactive than preventive, because spot inspection typically finds problems after-the-fact and provides only a snap-shot on the day of inspection.

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Inspection System is Quota Driven

Inspection frequency as specified in statute/rules does not consider different health risks. For local sanitarians, compliance verification is associated with an annual inspection quota. At one time, an inspection frequency was accepted nation-wide as the best approach to regulation. However, now it is generally accepted that inspection by itself does not provide an effective approach which reduces public health risk. In this regard, we paraphrased the following from a recent environmental health periodical:

At one time, the majority embraced and kissed the frog of compliance inspection. The public and industry believed inspections would become an adorable prince of reduced public health risk. However, the kisses were misplaced because compliance inspections did not reduce risk. The frog remained a frog.

To meet an inspection quota, sanitarians limit time spent on training/education and assistance of owner/operators which could help prevent or reduce risks to public health. By concentrating time on inspections, sanitarians cannot always take advantage of their professional expertise and provide consultation to improve process and procedure controls which reduce public health risk.

Inspection Frequency Drives Workload Priority

To evaluate compliance and assess consistency, FCSS focuses on the results of local inspection activity, specifically the number of inspections completed. With the focus on inspections, local sanitarians conduct the required two annual inspections of every food establishment, yet do not have adequate time to educate and inspect higher risk establishments, probably requiring more than two visits each year. Sanitarians also conduct annual inspections of low risk motels and trailer courts which limits inspection time for higher risk food establishments. Similarly, sanitarians attempt to conduct the required number of annual inspections, but do not always complete follow-up inspections required for identified deficiencies.

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Mandated Inspection Frequency not Efficient Use of Time

Most sanitarians do not believe annual inspection of hotels/motels, trailer courts, or septic pumper disposal sites is an efficient use of time. Complaint investigation, already a sanitarian responsibility, could provide assurance of a response to problems identified in these facilities by other health officials, competing commercial establishments, or the public. When compared to potential risk associated with many food purveyors and swimming pools, the potential public health risk of these three categories is lower. By mandating annual inspections for these lower risk facilities, the flexibility of local sanitarians to dedicate adequate time to higher risk facilities is restricted.

One reason these facilities are frequently assessed at a lower risk is the public's ability to react to potential hazards. The public can observe potential hazards in hotel/motel rooms and trailer courts (observe, smell, or touch) and decline use. In most eating establishments, the public cannot observe food preparation activity and assumes hazards have been eliminated. Similarly, the public is seldom aware of safe chemical levels or proper filtering in swimming pools. During our review of other states activities, we noted examples of states which neither license nor inspect hotels/motels, trailer courts or septic pumbers.

Alternative: Assess and Reduce Risk

An alternative to compliance inspection focuses on risk management, supported by training and education programs. This approach evaluates process and procedure controls to reduce risk to public health rather than verify compliance with specific codes which may or may not pose risk. For example, by tracking time-temperature during food preparation, high and low risk activities or steps can be identified and procedures developed to reduce high risk. Risk management stresses problem prevention, monitoring, and control, while educating owner/operators and/or conducting necessary inspections. A construction or modification plan review by a qualified sanitarian can significantly reduce future risk. Facilities built in accordance with building codes and public health regulations, developed to reduce risk, decrease the need for frequent sanitarian attention.

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How to Increase Sanitarian Effectiveness?

To more effectively utilize limited sanitarian resources, local health officials need to concentrate on the highest risk establishments/activities in their county(s), regardless of category: food establishment, public accommodation, campground/trailer court, swimming pool/spa, or septic pumper. In conjunction with FCSS, county sanitarians should develop risk criteria to allow a variable inspection/education visit frequency which coincides with the designated level of risk. The highest risk establishments might require multiple (two or more) annual visits. The lowest risk establishments may only require biennial visits, which could be training, inspection or simply a spot-check to verify operations have not changed or to determine the need to increase/decrease training or inspection.

In response to our proposal, the department endorsed the risk-based approach and had already initiated training at semi-annual conferences. However, the department does not support categorical de-emphasis of inspection for any facility category such as trailer courts without individual risk assessments.

Revision of Statute/ARM Necessary

Revision of existing statute and rule requirements for annual inspection frequency is necessary to provide FCSS and local sanitarians the flexibility to concentrate on risk reduction. Frequency of training/education visits or inspections should depend on the risk assessed for each establishment/facility. The revision process should include procedures to coordinate county visit/inspection frequency with the department.

Establish Risk Criteria

Since the role of FCSS is to achieve consistency, section staff and local county health officials will need to jointly establish criteria for risk assessment. County proposals for training/education visits and inspections could be reviewed by FCSS similar to procedures used for modified inspections already outlined in ARMs for food establishments. Cascade County already uses a risk assessment based on analysis of inspection report history to recommend a modified inspection schedule to the section. Other counties participating in the modified inspection program use similar although less formally documented analysis.

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Risk Assessment Should Include Non-licensed Facilities

Statute does not set a public health inspection requirement for non-licensed facilities such as schools, hospitals, and jails. Previously, we noted inconsistent inspection of non-licensed facilities across-the-state, because sanitarian workload and local priorities influence whether or not counties complete inspections of non-licensed facilities. Since non-licensed facilities can represent public health risk like licensed facilities, these facilities should be included in county risk assessment and training/education visit or inspection planning.

Revise Form and Change Inspection Emphasis

To help assure sanitarians identify deficiencies and corrective action which will reduce risk during training/education visits or inspections, FCSS should revise the existing form to reduce emphasis on the inspection score. During our observations of county inspections, it was apparent many owner/operators were interested in the inspection score rather than identification of deficiencies and corrective action. More reliance on record-keeping by establishment owner/operators could be a factor used to help determine the need for a scored inspection. Additionally, FCSS should revise performance criteria used to determine the amount of license fee revenue returned to counties. Instead of relying solely on the number of annual inspections completed to measure performance, follow-up inspections, training/education visits, and class attendance could also be used as criteria.

While the department agreed with this change in emphasis, concerns included coordination of performance measures among local health units and development of administrative rule criteria to assure consistency.

Summary: FCSS can Help Increase Efficiency and Effectiveness of Sanitarians

To increase the efficiency and effectiveness of local health programs, FCSS needs to revise the compliance verification approach which relies on scored and completed inspections. Risk assessment criteria should be developed and inspection frequency should be risk-based and coordinated with the department. In addition, FCSS should reduce emphasis on scored inspections and on the number of completed inspections to determine county performance.

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Recommendation #2

We recommend the department:

- A. Seek revision of statute to provide for variable training/education visits and inspection schedules based on risk assessment for swimming pools/spas.**
- B. Revise administrative rules to provide for variable training/education visits and inspection schedules based on risk assessment for food establishments, hotels/-motels, trailer courts, and septic pumbers.**
- C. In conjunction with local health authorities, develop risk criteria/categories for establishments and facilities for use by sanitarians to determine training/inspection visit frequency.**
- D. Revise inspection forms and inspection tracking procedures to emphasize identification of deficiencies and corrective action which reduces risk.**

Swimming Pool Inspection Responsibility

Seasonal swimming pools require an annual inspection, while year-round pools require inspections twice a year. Section 50-53-209, MCA, assigns inspection responsibility to the department and provides an alternative for county inspection through a cooperative agreement between state and local government agencies. Eight counties have declined responsibility for inspections. Therefore, FCSS staff conduct pool/spa inspections in these counties which account for approximately 30 percent of Montana's 400 pools and spas.

Statutes which address inspection responsibilities for food establishments, public accommodations, and trailer courts do not provide this alternative for local health authorities. These statutes specify state and local sanitarians shall make investigations and conduct inspections. Forty-six Opinion of the Attorney General, Number 3, issued March 3, 1995, also indicates local boards of

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health are required to inspect food establishments and to participate in enforcing state laws governing those establishments. As a result, all counties participate in inspection activity for these other programs.

Inspection by FCSS not Efficient

We observed FCSS staff inspection of public swimming pools. The complexity of pool inspection can be extensive because of the variety of plumbing, filtering, and chemical treatment systems. However, local sanitarians with appropriate training also have the expertise to inspect these facilities. Travel time for FCSS staff to inspect pools is significant. Unannounced inspections may be conducted when the pool operator is not available. If deficiencies are identified which require training/education, FCSS staff need to schedule a return visit. In addition to pool inspection, staff are also responsible for public pool illness complaints. FCSS staff become less effective, because they delay investigation of illnesses to coincide with time-frames scheduled for pool inspections in these counties. County sanitarians could more efficiently schedule and conduct local pool inspections, complete follow-up training/education and inspection visits, and investigate complaints.

Pool Statute Consistency is Needed

The department should request legislation to revise the swimming pool/spa statute to require local sanitarians to support pool inspection requirements similar to other public health statutes. This would result in more efficient use of staff time and resources.

The department agrees swimming pool and spa requirements should be consistent with requirements of similar statutes. However, the department is concerned about the lack of consensus among local health units on this issue.

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Recommendation #3

We recommend the department seek legislation to provide for local public health inspection of swimming pools and spas consistent with food establishments, hotels/motels, and campgrounds/trailer courts statutes.

University System Inspection is not Efficient

According to public health statute, the department shall inspect and work in conjunction with Montana university system units periodically as necessary. We observed university system food service facility and swimming pool inspections by FCSS staff. Inspection procedures are consistent with inspections by local sanitarians of other licensed facilities. To conduct these inspections, FCSS staff use considerable travel time. In addition, their capability to respond to complaints, conduct necessary follow-up inspections, or provide training/education is limited because of location and travel. Local sanitarians could more efficiently schedule inspections, conduct follow-up, and investigate complaints.

Food services at these facilities have not been licensed by the department as food establishments, apparently because traditionally school cafeterias were considered government entities. However, most university food services now operate a food court activity similar to commercial franchise food establishments. Franchise activities include pizza, chicken, and pasta.

Alternatives for Improvements

If university system food establishments were licensed like other commercial activities, local health departments could receive the license fee. County sanitarians could conduct training/education visits and inspections in accordance with the established risk assessment procedures discussed in previous sections.

Both the University of Montana and Montana State University have assigned sanitarians. There is an opportunity for these sanitarians to address some of the FCSS-related public health requirements.

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University system sanitarians could also conduct swimming pool inspections.

To formalize licensing requirements and establish training or inspection criteria, FCSS could work with local sanitarians and establish agreements with university system sanitarians.

The department agrees commercial food services could be licensed and proposes using a cooperative agreement with local communities to provide necessary public health services. The Office of the Commissioner of Higher Education also endorses our proposals for university system food services and swimming pools.

Summary

To more efficiently schedule inspections, conduct follow-up, and investigate complaints for university system food services and swimming pools, FCSS should license commercial food service activities and assign local responsibility. In addition, FCSS in conjunction with university system staff should use work agreements to more effectively support swimming pool requirements.

Recommendation #4

We recommend the department formalize university system licensing and inspection requirements through coordination with county and university system sanitarians.

Chapter IV - License Fees

Introduction

In the previous chapter, we emphasize risk-based program activity to improve efficiency and effectiveness of FCSS and local sanitarian resources by focusing on priority workload requirements. In this chapter, we propose using risk as the basis for assessment of license fees, because license fees provide a portion of the funding for local program workload costs.

Combination of Funding Required for Local Program Costs

Statutory license fees do not provide funds for the total cost of public health and safety inspection and training/education, administration, follow-up inspections, consultations, and construction plan reviews. Local general fund moneys or in some cases a combination of county general fund and locally established service fees support the remainder. A few counties use a statutory option, which allows them to collect a fee for the cost of a follow-up inspection to verify the correction of critical item deficiencies identified during annual inspections. Local follow-up inspection fees range from \$35 to \$100 and are retained at the county level.

Some counties also charge separately for construction or modification plan review, which is typically required prior to establishment licensure. Plan review fees vary from \$35 to \$50, or are based on an hourly rate. Most counties consider plan review part of the service included with annual licensing and have not established a separate plan review fee.

In our review of other states, we also found examples of fees charged for training visits. Review of a 1994 license fee survey conducted by an Idaho agency indicated nine states do not charge a fee at the state level. While most of these nine states rely on general fund moneys, a few allow local authorities to establish license fees.

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License Fees Pay About 35 percent of the Total Costs

Fees were initially established to support administrative cost of licensure and have been revised to help pay a portion of inspection activity cost. We surveyed county sanitarians, industry representatives, and officials from other states for opinions on alternative approaches to funding inspection activities. While percentages varied considerably, the consensus was industry should bear the majority of the cost burden for licensure and education/inspection activity. We estimate license fees currently support approximately 35 percent of the total cost of Montana's FCSS-related programs. To provide additional information, we examined fee structures in other states and noted a sample of 11 which indicated industry pays the majority of inspection costs through license fees. The following table reflects the fee structure for these states.

Table 5
States with Majority of Cost Covered by License Fees

| <u>State</u> | <u>Minimum Fee</u> | <u>Maximum Fee</u> |
|--------------|--------------------|--------------------|
| Colorado | \$20 | \$100 |
| Oklahoma | 35 | 100 |
| Wisconsin | 45 | 105 |
| Maine | 45 | 125 |
| Oregon | 50 | 195 |
| Minnesota | 70 | 302 |
| Kansas | 70 (average fee) | |
| New Mexico | 75 (single fee) | |
| Louisiana | 75 | 500 |
| Nevada | 85 | 250 |
| Indiana | 110 | 200 |

Note: Survey response varied, some states provided minimum and/or maximum, others average. A total of 38 states responded to the survey.

Source: Survey conducted by the State of Idaho, 1994.

Non-licensed Facility Inspection Costs are Public Responsibility

The training/education and inspection costs associated with non-licensed facilities such as schools, jails, or other county and municipal government facilities are not intended to be covered by the revenue from fees from licensed establishments. As a result, the public is responsible for the burden of the non-licensed facility costs. Neither the scope of this audit nor the capability of local

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tracking systems allowed a detailed review of local costs for licensed versus non-licensed facilities. However, we estimate the costs associated with inspection of non-licensed facilities could approach 15 percent of the total for FCSS-related programs in many communities

Current License Fees are not Based on Risk or Inspection Time

License fees vary by facility category: food establishment, public accommodation, trailer court, swimming pool, and septic pumper. However, fees do not vary by the type, complexity, or size of facility within each category. Therefore, fees do not reflect an assessment of the relative risk to public health or the amount of time required for individual establishment or facility inspections.

Sanitarian Costs Depend on Establishment Service/Activity

The following table compares sanitarian labor costs to revenue available from license fees for an espresso coffee shop and a supermarket with separate delicatessen, prepared chicken counter, fresh meat and/or fish market, and bakery. The table shows by example the cost of inspections is not covered by license fees for multi-service or full-service activities. On the other hand, for a limited service establishment, the fee exceeds the cost of inspection. This example only reflects an estimated labor cost and does not include other costs such as administration, vehicles, equipment, or supplies.

Table 6

County Inspection Cost Versus Revenue Example

| | Expresso | Supermarket |
|--|-----------------|--------------------|
| State License Fee | \$60 | \$60 |
| 85 % of Fee Returned to County | \$51 | \$51 |
| Inspection Frequency | 2/year | 2/year |
| Inspection Time | 15 Minutes | 3 Hours |
| Cost of Inspection (Frequency x time x rate) | \$12.50 | \$150 |
| Net to County (revenue versus cost) | \$38.50 | (\$99) |

Note: Sanitarian labor rate estimated at \$25/hour.

Source: Prepared by the Legislative Audit Division from Audit Fieldwork.

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Other categories of licensed facilities such as hotels/motels or trailer courts are similar. For example, a modern motel or trailer court built in accordance with the most recent codes, which also received a comprehensive construction plan review to assure compliance with public health concerns, requires less time to inspect than a 50 year-old facility. A 60-space trailer court with a common laundry facility takes more time to inspect than a 15-space court. The license fee for both facilities is \$40 and counties receive \$34 for an annual inspection.

Risk-Based Licensing Could Improve Sanitarian Effectiveness

Since legislative intent is to achieve consistency to prevent, reduce, and eliminate public health risk and sanitarians accomplish most of the related activities, equitable licensing which considers risk could help assure the most effective determination of work priorities. Training/education and inspection visit frequency discussed in previous sections would relate directly to license fees, because both visit frequency and fee structure are based on assessment of risk. Higher risk establishments/facilities, regardless of category (food purveyors, hotels/motels, campgrounds and trailer courts, and swimming pools and spas), should be assessed higher license fees and have more frequent training/education and inspection visits. Lower risk establishments which pay lower license fees may not require annual education or inspection visits and should not require as much of a sanitarian's time.

Alternatives Available for Fees

For food establishments, fees could be assessed using criteria such as the endorsements reflected on current licenses: eating establishments, taverns, meat markets, bakeries, food/beverage manufacturers, warehouses, mobile/temporary activities, and perishable or frozen food providers. Since existing license endorsements do not necessarily reflect risk differences, other criteria should also be considered. The following table identifies examples of license fee criteria used by other states to assess fees.

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Table 7

Other States' Fee Assessment Criteria

| <u>Criteria</u> | <u>State</u> |
|--|--|
| Square Footage (retail store) | AZ, CO, KY, MI, NV, ND |
| Cash Registers/Check Stands (retail) | RI, WA |
| Convenience or Supermarket (retail) | AK, FL |
| Food Area (delicatessen, bakery, meat) | NE |
| Gross Sales (retail or restaurant) | IN, IA, LA, MN, MS, OR, SC |
| Seating Capacity (restaurants) | AZ, MA, MS, ND, NV, NY, OH, RI, SD, TN, UT |
| Employees (restaurant) | GA, IN, MA, MN |

Source: Survey conducted by the State of Idaho, 1994

Other factors could also affect risk and license fee assessment. For example, if owner/operators employ food handlers certified through courses available nation-wide, a license discount could be offered. Similarly, if establishments incorporate process controls and record-keeping, based on accepted hazard analysis techniques, a license fee discount is an alternative. Both examples reflect effort by owner/operators to reduce risk to public health, and warrant consideration for fees lower than those establishments which do not demonstrate such initiative. License fee incentives encourage voluntary compliance with regulatory requirements.

For hotels, motels, rooming houses, and trailer courts, license fee equity could be improved by counting the number of rooms, or trailer spaces or age of the facility/site. Similarly, license fees for swimming pools/spas could be based on water capacity. These types of criteria could also reflect public health risk, but may not always, depending upon the code at the time of construction and/or the technology employed.

The department agrees with the need for license fee equity based on risk potential. The department also supports the need to review program activity costs for both licensed and non-licensed facilities.

Chapter IV - License Fees

**Summary: License Fee
Equity Supports Risk-
Based Approach**

License fees which are risk-based and reflect the necessary training/education and inspection activity could help local health authorities assure the most effective determination of sanitarian workload priorities and utilization of available time. The department should consider fee alternatives and involve local health authorities, industry, and the public in establishment of a more equitable approach.

Recommendation #5

We recommend the department seek legislation to establish an equitable license fee assessment approach which reflects risk to public health.

Agency Response

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PH.D.
DIRECTOR

STATE OF MONTANA

September 3, 1996

SEP 6 1996

Mr. Jim Pellegrini
Deputy Legislative Auditor
Office of the Legislative Auditor
P.O. Box 201705
Helena, MT 59620-1705

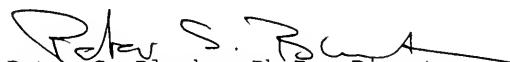
Dear Mr. Pellegrini:

Enclosed please find the Department of Public Health and Human Services response to the Performance Audit Report which contains recommendations regarding the Food and Consumer Safety Section programs, Communicable Disease Control and Prevention Bureau (CDCB), Health Policy and Services Division (HPSD). Also enclosed are two copies of the final report provided by your office.

Our response contains the Food and Consumer Safety Section (FCSS) Response for each recommendation. We have included whether or not we concur with the recommendation, provided action plans and, when possible, anticipated time frames for completion of each plan.

Please notify me of the date your report and our response will be provided to the Legislative Audit Committee. Please feel free to contact me if you have any questions about the enclosed response.

Sincerely,


Peter S. Blouke, Ph.D., Director
Department of Public Health and Human Services

Enc.

cc: Nancy Ellery, Administrator, HPSD
Kathleen Martin, Chief, CDCB
Mitzi Schwab, Supervisor, FCSS

FOOD AND CONSUMER SAFETY SECTION RESPONSE TO
PERFORMANCE AUDIT REPORT
(August 1996):

Food and Consumer Safety Section

I. Introduction:

This document contains the Food and Consumer Safety Section (FCSS) response to the performance audit report of licensed establishment programs. Included in this response is whether or not the Section concurs with each recommendation and the action plan to address each recommendation.

The Legislative Audit Division (LAD) developed five audit objectives following a preliminary review of FCSS responsibilities for licensed establishments. The audit focused upon licensed establishment programs. Their primary purpose is the prevention and elimination of conditions and practices which endanger public health, including sanitation and safety. The LAD did not audit FCSS public health programs which are not designated local health unit responsibilities and are not associated with licensed establishment programs. The audit found that the "FCSS is generally in compliance with statutory requirements."

II. Program Response to Audit Recommendations:

Recommendation No. 1:

We recommend the department reassess priorities to increase training/education assistance to local health units and establishment owner/operators by increasing the frequency of county visits, establishing a video library, and using existing county training packages.

Program Response:

Partially Concur: The FCSS agrees that training/education assistance to local health units and owner/operators should be increased. Prioritization of existing state resources can be improved. Alternatives as suggested for resource allocation will be considered for implementation. The Program already has established a base video library which can be improved for more effective local health unit and owner/operator training/education immediately. The FCSS will coordinate with local health departments that have existing training packages to increase their availability and possible use by other local health departments.

Prioritization of existing state resources to increase county visits does conflict with other recommendations in this report that FCSS should give priority to statute, administrative rule, inspection form and tracking procedure changes. The FCSS has been unable to simultaneously give the highest priority to the training/education assistance changes and the statutory/administrative rule changes with existing resources.

Recommendation No. 2:

We recommend the department:

A. Seek revision of statute to provide for variable training/education visits and inspection schedules based on risk assessment for swimming pools/spas.

Program Response:

Partially concur: The FCSS agrees that public swimming pool/spas minimum performance program requirements, including inspection frequency, should be set by administrative rule rather than by statute. Public health services for swimming pools/spas should be commensurate with risk assessment.

The FCSS categorizes all swimming pools/spas as high risk type establishments based upon potential swimmer illness, injury, and death factors. The minimum statutorily established swimming pool/spa inspection frequencies are once/year for all swimming pool/spas and a second critical operating standard inspection for year-round establishments. These minimum inspection frequencies would not be reduced with implementation of a risk based public health service system. The FCSS acknowledges that training/education visits are extremely beneficial for owner/operators but believes these visits should be additional rather than replacement services for the existing minimum inspection standard in the statute.

B. Revise administrative rules to provide for variable training/education visits and inspection schedules based on risk assessment for food establishments, hotels/motels, trailer courts, and septic pumbers.

Program Response:

Concur: The FCSS agrees that licensed establishment program services should be based upon assessment of public health risk. Inclusion of establishment training/education visits by local health agency staff would improve owner/operator public health knowledge. This would potentially improve voluntary implementation of operating conditions and practices which would reduce the public's risk of becoming ill from food borne or water borne diseases. For each type of licensed establishment, administrative rules should set a baseline public health services standard that includes owner/operator training/education, illness or injury complaint investigations, and compliance inspections.

Septic tank pumper licensing functions were being performed by the FCSS at the time of this performance audit and are in the process of being transferred to another agency during FY 97 to complete legislative reorganization goals.

C. In conjunction with local health authorities, develop risk criteria/categories for establishments and facilities for use by sanitarians to determine training/inspection visit frequency.

Program Response:

Concur: The FCSS agrees to work towards establishing a risk based public health assessment system in conjunction with local health authorities. The system would establish baseline standards for public health services by prioritizing establishments with a higher risk of conditions or practices for public illness or injury. Public

health services would include education/training visits, inspections, investigations, and other types of contacts and their frequencies.

D. Revise inspection forms and inspection tracking procedures to emphasize identification of deficiencies and corrective action which reduces risk.

Program Response:

Concur: The FCSS agrees that establishment inspection forms emphasizing identification of deficiencies and corrective action which reduce risk should be reviewed. Inspections focused primarily upon risk could be utilized in addition to "standard" (includes both high and low risk factors) establishment inspections. Any inspection form and tracking system changes require consensus development with local health agencies. The changes must also enable enforcement actions when they are necessary.

Current establishment inspection forms are multi-purpose and include the capability to record various types of inspections, including standard, critical deficiency, and follow-up violations inspections. Through local health agency training, emphasis can be placed upon corrective actions that address risk reduction. Administrative rules performance standards for local health departments can be changed to include integrated services and inspection types for establishments.

Recommendation No. 3:

We recommend the department seek legislation to provide for local public health inspection of swimming pools and spas consistent with food establishments, hotels/motels, and campgrounds/trailer courts statutes.

Program Response:

Concur: The FCSS agrees with the LAD that the public swimming pool/spa establishments are licensed for the same purpose as food establishments, hotels/motels, and campgrounds/trailer courts which is the prevention or elimination of conditions or practices that endanger public health. State and local program responsibilities should be similar for all licensed establishment programs. Provision of swimming pool/spa direct establishment inspection services by the state does not effectively utilize public health resources and reduces the FCSS's ability to utilize program staff resources for local health agency and owner/operator training/education. The department has submitted for the Governor's approval a 1997 Legislation proposal which includes amending 50-53, MCA, statutory language to include this recommendation.

Recommendation No. 4:

We recommend the department formalize university system licensing and inspection requirements through coordination with county and university system sanitarians.

Program Response:

Partially Concur: The FCSS agrees that section training/education

objectives can be met through development of cooperative agreements with either the local health agencies or qualified university staff for university system inspection requirements. The FCSS agrees to pursue development of these cooperative agreements to perform on-campus food service and swimming pool inspections. As required by 50-1-202(5), MCA, the cooperative agreements must provide that the department prepare a report on sanitary conditions of the facilities inspected to the appropriate Executive Branch agency.

Due to local health agency and university system qualified staff resource limitations, it is anticipated that local health units may not agree to perform university system licensed and license exempt food service and public swimming pools/spas inspections through a cooperative agreement.

Recommendation No. 5:

We recommend the department seek legislation to establish an equitable license fee assessment approach which reflects risk to public health.

Program Response:

Concur: The FCSS concurs with the LAD recommendation. The current establishment flat license fee assessment covers ~ 35% of local health agency cost of providing minimal establishment inspection and investigational services. Public health services should reflect differences in establishment business volume and risk of conditions or practices causing consumer illness or injury. The department is working closely with local health agencies to develop a more appropriate license fee assessment approach. This process is complex and will require an incremental approach over several legislative sessions.

III. Conclusion

With the exception of Recommendations No. 1, 2A, and 4, the FCSS fully concurs with all the recommendations contained within the Performance Audit Report.

The FCSS partially concurs with Recommendations No. 1, 2A, and 4. Concerning Recommendation No. 1, the FCSS asserts that there are conflicting prioritization recommendations for existing FCSS resources. The recommendations for training/education and statutory/administrative rule amendments are complex, numerous, and resource intensive. The FCSS does agree with Recommendations No. 2A and 4, noting that pursuit of the recommendations may not resolve the issues.

